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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,179	08/02/2000	Michael J. McMahon	769-236 Div.	1111

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EXAMINER
SIPOS, JOHN

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

LC

Office Action Summary	Application No.	Applicant(s)	
	09/631,179	MCMAHON ET AL.	
	Examiner	Art Unit	
	John Sipos	3721	

-- Th MAILING DATE of this communication appears n the cover sh et with the c rrespondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 6-33 is/are pending in the application.

4a) Of the above claim(s) 9-33 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 6-8 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachm nt(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

INVENTORSHIP

In view of the papers filed August 12, 2002, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by David J. Matthews and Charles Thorpe.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The specification is objected to under 37 CFR 1.71 as failing to adequately teach how to make and use the invention, i.e. failing to provide an enabling disclosure. (A rejection of claims based on this objection follows this paragraph.) The disclosure does not set forth that the interlocking members of the zipper are interlocked during the slider application or that the members remain interlocked throughout the process. The only place that a reference can be found to the state of the zipper in the specification is on page 6, lines 9-11; however this merely states that the slider is applied to the closing end of the zipper. This does not describe the type of slider or zipper being used nor does it describe the state of the zipper at the specific position where the slider is applied.

Claims 1-6 and 8-22 The are rejected under **35 U.S.C. ' 112, first paragraph**, as being predicated on an **insufficient disclosure** for the reasons set forth in the objection to the specification set forth above.

The amendment filed June 26, 2001 8/14/2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the interlocked state of the zipper during application of the slider.

Applicant is required to cancel the new matter in the reply to this Office Action.

DOUBLE PATENTING REJECTION

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending

Application No. 09/915,100. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only differences are that the claims of the '100 application claims do not recite the insertion of the slider onto the zippers after filling the bags with a product. It would have been obvious to one skilled in the art to apply the sliders of the claim 6 process of the '100 application after the filling step since the timing of the slider application, i.e. before or after the filling step, would have been merely a matter of obvious design consideration since it doesn't solve any stated problem and the process would perform equally well regardless of the sequence of these steps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 6-8, to the extent supported by the disclosure, are rejected under **35 U.S.C. ' 103** as being unpatentable over the patent to Herz (3,790,992). The patent to Herz shows a package forming process in which sliders are applied to connected bags that comprise a continuous zipper fastener (see column 3, line 51 et seq.). The process does not discuss the timing of the filling operation. It would have been obvious to one skilled in the art to apply the sliders of Herz after the filling of the bags since the timing of the slider application, i.e. before or after the filling step, would have been merely a matter of obvious design consideration since it doesn't solve any stated problem and

the process would perform equally well regardless of the sequence of these steps. Furthermore, slider application to completed packages is well known in the art.

Claims 6-8 are rejected under **35 U.S.C. ' 103** as being unpatentable over the patent to Herz (3,790,992) in view of Machacek (6,047,450) or Richardson (5,442,838) or Herrington (5,067,208) or in the alternative Machacek (6,047,450) or Richardson (5,442,838) or Herrington (5,067,208) in view of Herz (3,790,992). The patent to Herz shows the process of applying sliders to connected bags but it does not show the application of sliders to fully interlocked fasteners. The Machacek,Richardson and Herrington patents show the application of sliders to the outside of the fasteners constructed so that the fasteners may be interlocked during application of the sliders. It would have been obvious to one of ordinary skilled in the art to either substitute a fastener/slider such as shown by Machacek or Richardson for the fastener/slider of Herz or form the bags of Machacek or Richardson in connected form and apply the sliders to the connected bags as shown by Herz to achieve a more efficient and continuous operation. The timing of the filling operation is not critical and it would have been obvious to one of ordinary skilled in the art to fill the bags either before or after the application of the slider.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered but are not found to be persuasive.

Regarding the "interlocked" state of the fastener during application of the sliderosure, the disclosure does not anywhere discuss or shows the interlocked condition of the fastener during application of the slider. The argument that the slider is applied at the closing end of the fastener is not convincing since that may mean that the fastener may be closed along some or even all of its length but not necessarily at the point of application or during application. The specific slider or fastener are not clearly shown in the drawings so that the slider could be the type that separates the fastener profiles during application or one that does not separate the fastener profiles.

Regarding the rejections based on prior art, it is noted that although the references do not set forth the interlocked condition of the fasteners it is merely a matter of the specific type of fastener/slider being used that would determine the condition of the fastener at the time of the application of the slider. It is well known in the zipper/slider art to use fasteners which do not require the opening of the fastener during application. These include, two piece sliders that are applied from the outside of the bag, sliders with fold down sides, sliders with separating blades that do not extend down between the profile elements but rather separate the edges of the bag above the profile elements, snap on sliders that are flexed apart during application, etc. Such well-known sliders are used in the second rejection. Note the patent to Herrington specifically states in column 7 line 67 et seq. that the profiles of the fastener are interlocked during application of the slider (also note Figures 2,3,5).

REFERENCES CITED

Also note the previously cited references to Thomas, Ausnit and Tilman show the application of sliders to interlocked fasteners

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882.** The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Peter Vo, can be reached at (703) 308-1789.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

John Sipos
Primary Examin r
Art Unit 3721